Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
2000 Biennial Regulatory Review	)	
	)	**IB Docket No. 00-202**
Policy and Rules Concerning the International, Interexchange Marketplace	)	
	)	
	)	

NOTICE OF PROPOSED RULE MAKING

Adopted: October 12, 2000 **Released: October 18, 2000**

Comment Date: November 17, 2000
Reply Date: December 4, 2000

By the Commission: Commissioner Furchtgott-Roth concurring and issuing a statement.

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I. INTRODUCTION AND BACKGROUND

1. On February 8, 1996, Congress enacted the Telecommunications Act of 1996 (the 1996 Act), which amends the Communications Act of 1934 (the Act).[1] The major purpose of the 1996 Act is to establish "a pro-competitive, deregulatory national policy framework" designed to make available to all Americans advanced telecommunications and information technologies and services "by opening all telecommunications markets to competition."[2] Congress empowered the Commission with an important tool to realize this goal in Section 10 of the Act. The Commission is required to forbear from applying provisions of the Act, or of the Commission's regulations, to a telecommunications carrier or telecommunications service, or class thereof, if the Commission makes certain findings with respect to such provisions or regulations as required in Section 10.[3]

2. For over twenty years, the Commission has made efforts to deregulate the domestic interexchange marketplace through several proceedings, including the *Competitive Carrier proceeding*.[4] After prolonged litigation regarding the Commission's authority to move to a nontariffed environment for non-dominant interexchange carriers, the Commission, pursuant to the new power to forbear in Section 10 and consistent with the decision affirming its authority to mandate detariffing policies by the Court of Appeals for the District of Columbia, forbore from the requirements of Section 203 of the Act and detariffed domestic, interstate, interexchange services.[5] Specifically, the Commission determined

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1 The Communications Act of 1934, 47 U.S.C. §§ 151 *et seq.* The Telecommunications Act of 1996 (the 1996 Act) amends the Communications Act of 1934. Hereinafter, all citations to the Communications Act will be to the relevant section of the United States Code unless otherwise noted. The Communications Act of 1934, as amended, will be referred to herein as the Communications Act or the Act.

2 *Joint Explanatory Statement of the Committee of Conference*, S. Conf. Rep. No. 230, 104th Cong., 2d Sess. 113 (1996) (*Joint Explanatory Statement*).

3 *See* 47 U.S.C. §§ 160, 160(d) (prohibiting the use of forbearance except as provided in Section 251(f) to the requirements of Sections 251(c) or 271 until the Commission determines that the requirements have been fully implemented).

4 *See Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, CC Docket No. 79-252, Notice of Inquiry and Proposed Rulemaking, 77 FCC 2d 308 (1979) (*Competitive Carrier NPRM*); First Report and Order, 85 FCC 2d 1 (1980) (*Competitive Carrier First Report and Order*); Further Notice of Proposed Rulemaking, 84 FCC Rcd 445 (1981) (*Competitive Carrier Further NPRM*); Second Further Notice of Proposed Rulemaking, FCC 82-187, 47 Fed. Reg. 17,308 (1982); Second Report and Order, 91 FCC 2d 59 (1982); Order on Reconsideration, 93 FCC 2d 54 (1983); Third Report and Order, 48 Fed. Reg. 46,791 (1983); Fourth Report and Order, 95 FCC 2d 554 (1983) (*Competitive Carrier Fourth Report and Order*), *vacated. AT&T v. FCC*, 978 F.2d 727 (D.C. Cir. 1992), *cert. denied, MCI Telecommunications Corp. v. AT&T*, 113 S.Ct. 3020 (1993); Fourth Further Notice of proposed Rulemaking, 96 FCC 2d 1191 (1984); Fifth Report and Order, 98 FCC 2d 1191 (1984) (*Competitive Carrier Fifth Report and Order*); Sixth Report and Order, 99 FCC 2d 1020 (1985) (*Competitive Carrier Sixth Report and Order*), *vacated, MCI Telecommunications Corp. v. FCC*, 765 F.2d 1186 (D.C. Cir. 1985) (collectively referred to as the *Competitive Carrier proceeding*).

5 Section 203 requires every common carrier, except connecting carriers, to file with the Commission tariffs for itself and connecting carriers for the provision of interstate and foreign wire or radio communications. 47 U.S.C. § 203. *See In the Matter of Policy and Rules Concerning the Interstate,* (continued....)

that complete detariffing,[6] with limited exceptions for permissive detariffing, satisfies the criteria set forward in Section 10(a) that:

> [T]he Commission shall forbear from applying any regulation or any provision of this Act to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services, in any or some of its or their geographic markets, if the Commission determines that –
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> > (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable, and are not unjustly or unreasonably discriminatory;
> > (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and
> > (3) forbearance from applying such provision or regulation is consistent with the public interest.[7]

The Commission made no determination as to whether detariffing international, interexchange services satisfies the requirements of Section 10, as competitive conditions in the international marketplace may vary from those in the domestic interexchange marketplace.[8] Therefore, we commence this proceeding

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Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended, CC Docket No. 96-61, Notice of Proposed Rulemaking, 11 FCC Rcd 7141 (1996) (*Detariffing NPRM*); Report and Order, 11 FCC Rcd 9564 (1996); Second Report and Order, 11 FCC Rcd 20,730 (1996) (*Detariffing Order*); *stay granted, MCI Telecommunications Corp. v. FCC*, No. 96-1459 (D.C. Cir. Feb. 13, 1997); Order on Reconsideration, 12 FCC Rcd 15,014 (1997) (*Detariffing Order on Reconsideration*); Second Order on Reconsideration and Erratum, 14 FCC Rcd 6004 (1999) (*Detariffing Second Order on Reconsideration*); *stay lifted and aff'd, MCI WorldCom, Inc., et al. v. FCC*, 209 F.3d 760 (D.C. Cir. April 28, 2000).

6 "Complete detariffing" refers to a policy of neither requiring nor permitting nondominant interexchange carriers to file tariffs pursuant to Section 203 of the Act for their interstate, domestic interexchange services. "Permissive detariffing" refers to a policy of allowing, but not requiring, non-dominant interexchange carriers to file tariffs for such services.

7 47 U.S.C. § 160(a). The Commission, in making the public interest determination, is required to consider whether forbearance will promote competitive market conditions, including the extent to which forbearance will enhance competition among providers of telecommunications services. 47 U.S.C. § 160(b).

8 *Detariffing NPRM*, 11 FCC Rcd at 7160, para. 33 (defering to this proceeding the question of whether the Commission should consider generally forbearing from requiring tariffs for international services provided by a non-dominant carrier, but seeking comment on whether to forbear from applying tariffs to the international portion of domestic and international bundled service offerings); *Detariffing Order*, 11 FCC Rcd at 20,781-83, paras. 94-98 (finding that there is insufficient evidence to determine if forbearance is required for the international portion of domestic and international bundled service (continued....)

to determine whether competitive conditions in the international interexchange marketplace support detariffing non-dominant carriers' provision of international services in accordance with the criteria in Section 10 and whether the detariffing of international services should mirror the detariffing of domestic services. We note that the regulatory safeguards imposed on carriers that are regulated as dominant on particular routes because of an affiliation or alliance with a foreign carrier with market power are set forth in 47 C.F.R. § 63.10 and differ from the regulatory safeguards imposed on carriers that are dominant for reasons other than a foreign carrier affiliation, *i.e.* price cap regulation. For purposes of this proceeding, when referring to the non-dominant status of carriers, unless otherwise noted, we intend to invoke the latter reference to dominant classification due to reasons *other* than a foreign carrier affiliation. We address separately, in Part II.C, the concerns applicable to international carriers regulated as dominant for specific international routes because of their affiliations with foreign carriers that possess market power in the destination market and welcome further comment on these issues. [9]

3. We also initiate this proceeding as part of our biennial review of the regulations concerning the operations or activities of any provider of telecommunications services. Specifically, Section 11 of the Act directs the Commission to undertake this review in every even-numbered year, beginning with 1998.[10] The Act directs the Commission to make a determination whether a particular regulation is no longer necessary "as a result of meaningful economic competition between providers of such service."[11] If the Commission deems any regulation "no longer necessary in the public interest," it is required to repeal or modify the regulation.[12] The Commission recently raised the issue of whether tariffs for international interexchange services and the filing of contracts under Section 43.51 of the Commission's rules should be examined as part of its 2000 biennial regulatory review of Commission rules.[13] We note that in response to the Commission's staff report, we received comments supporting efforts to detariff international interexchange services and to simplify and amend Commission reporting rules.[14]

4. Examining conditions in the current marketplace, we find that there have been dramatic changes in the market for international interexchange services in recent years. In particular, in the past few years, the international interexchange marketplace has experienced, to the benefit of consumers and competition in the U.S. market, increased privatization and liberalization of foreign markets, rapidly declining international settlement rates, and larger numbers of providers of international interexchange

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offerings); *Detariffing Order on Reconsideration*, 12 FCC Rcd at 15,043-44, paras. 51-52 (affirming decision that there is insufficient evidence to make a determination).

9 *See* 47 C.F.R. § 61.41(a)(1) (imposing price caps).

10 47 U.S.C. § 161.

11 47 U.S.C. § 161(a)(2).

12 *Id.*

13 *Federal Communications Commission Biennial Review 2000*, CC Docket No. 00-175, Staff Report, FCC 00-346 (rel. Sept. 19, 2000).

14 *See e.g.*, Alloy LLC Comments, General Services Administration Comments, Sprint Corp. Comments, Telecommunications Management Information Systems Coalition Comments, Verizon Wireless Comments, Worldcom, Inc. Comments (filed Oct. 10, 2000).

service.[15] In light of the World Trade Organization (WTO) Basic Telecom Agreement and WTO Members' commitments to open markets, the Commission determined in a series of proceedings that it serves the public interest to adopt rules to promote competition in the international interexchange marketplace by opening further the U.S. market to competition from foreign companies and to reform and streamline its rules and policies governing the provision of U.S. international services.[16] As a result of these new deregulatory policies, in conjunction with market forces, there has been a substantial increase in the level of competition in the international interexchange marketplace that has benefited consumers. Therefore, we find that it is timely for us to examine whether it is necessary, in the context of the pro-competitive goals of the 1996 Act and the increased competition resulting from the liberalization and privatization policies of the WTO and the Commission's deregulatory policies, to continue to require U.S. non-dominant interexchange carriers to file tariffs for international services pursuant to the requirements of Section 203 of the Act.

5. Specifically, we propose, pursuant to the forbearance authority provided in Section 10 of the Act, to extend the complete detariffing regime that we adopted for domestic, interexchange services to the international services of non-dominant, interexchange carriers, including U.S. carriers classified as dominant due to foreign affiliations.[17] In addition, we tentatively conclude that we should adopt each of the following proposals:

(a) *Limited Exceptions for Permissive Detariffing*: We tentatively conclude that limited exceptions for permissive detariffing for international interexchange direct-dial services to which end-users obtain access by dialing a carrier's access code (CAC); and for the first 45 days of service to new customers that contact the local exchange carrier (LEC) to choose their primary interexchange carrier (PIC) are in the public interest.[18]

(b) *Public Disclosure Requirement*: Moreover, we propose adopting a public disclosure requirement that non-dominant interexchange carriers make information available to the public concerning current rates, terms, and conditions for all of their international interexchange services, in at least one location during regular business hours, and that such carriers that have

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15 *See infra* paras. 8-12.

16 The results of the WTO basic telecommunications services negotiations are incorporated into the General Agreement on Trade in Services (GATS) by the Fourth Protocol to the GATS, April 30, 1996, 36 I.L.M. 366 (1997). These results, as well as the basic obligations contained in the GATS, are referred to herein as the "WTO Basic Telecom Agreement." *See Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, IB Docket Nos. 97-142 and 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23,891 (1997) (*Foreign Participation Order*), Order on Reconsideration, FCC 00-339 (rel. September 19, 2000); *International Settlement Rates*, IB Docket No. 96-261, Report and Order, 12 FCC Rcd 19,806 (1997) (*Benchmarks Order*); Report and Order on Reconsideration and Order Lifting Stay, 14 FCC Rcd 9256 (1999) (*Benchmarks Reconsideration Order*); *aff'd sub nom. Cable & Wireless P.L.C. v. FCC*, 166 F.3d 1224 (D.C. Cir. 1999); *1998 Biennial Regulatory Review, Reform of the International Settlements Policy and Associated Filing Requirements*, IB Docket Nos. 98-148 and 95-22, CC Docket No. 90-337 (Phase II), Report and Order and Order on Reconsideration, 14 FCC Rcd 7963 (1999) (*ISP Reform Order*).

17 *See infra* Parts II.C & D. We note that these proposals are similar to those adopted in the domestic proceeding.

18 *See Detariffing Order on Reconsideration*, 12 FCC Rcd at 15,018, para. 5. *See infra* Part II.A.3.

Internet websites post this information on-line.[19]

(c) *Maintenance of Price and Service Information*: We also propose to require non-dominant interexchange carriers to maintain price and service information regarding all of their international interexchange service offerings. This price and service information should include the information provided in the public disclosure requirement as well as supporting documents for the rates, terms, and conditions of the offerings, all of which should be provided to the Commission within ten business days of receipt of a Commission request. We further propose that non-dominant interexchange carriers retain the price and service information for a period of at least two years and six months following the date the carrier ceases to provide international services on such rates, terms and conditions, in order to afford the Commission sufficient time to notify a carrier of the filing of a Section 208 complaint.[20]

(d) *Complete Detariffing of International Commercial Mobile Radio Services (CMRS)*: We propose revisiting the conclusion that permissive detariffing of CMRS providers for international services on unaffiliated routes is in the public interest. Instead, we tentatively conclude that our analysis regarding the public interest need for complete detariffing of international interexchange services by non-dominant carriers in order to protect consumers and further competition is applicable to CMRS providers of international services and, therefore, complete detariffing of international interexchange services provided by CMRS providers for affiliated and unaffiliated routes is warranted.[21]

(e) *Filing of Carrier-to-Carrier Contracts*: We tentatively conclude that only interexchange carriers classified as dominant for reasons other than a foreign affiliation under Section 63.10 of the Commission's rules should be required to file carrier-to-carrier contracts under Section 43.51 of the Commission's rules. We also propose maintaining the requirement for all authorized carriers, whether classified as dominant or non-dominant, contracting directly for services with foreign carriers that possess market power.[22]

We invite parties to comment on these proposals and tentative conclusions and on any other relevant issues, including transition issues, concerning the detariffing of international interexchange services provided by non-dominant carriers. With respect to each issue, parties should specify the bases upon

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19 *See Detariffing Second Order on Reconsideration*, 14 FCC Rcd at 6015-16, para. 18. *See infra* Part II.B.

20 *See infra* Part II.B.

21 *See infra* Part II.D. We do not propose extending to CMRS providers the additional proposals set forth for interexchange carriers, except to the extent set forth in Part II.D. We note that the Commission has previously detariffed the domestic interexchange services of CMRS providers without such conditions, and has permissively detariffed the international services of CMRS providers to unaffiliated points. *See Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, Second Report and Order, 9 FCC Rcd 1411 (1994) (*CMRS Second Report and Order*). *See Personal Communications Industry Association's Broadband Personal Communications Services Alliance's Petition for Forbearance for Broadband Personal Communications* Services, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 13 FCC Rcd 16,857 (1998) (*CMRS Forbearance Order*).

22 *See infra* Part II.E.

which they believe we can make the findings required to meet the statutory criteria for forbearance.

II. REGULATORY FORBEARANCE

A. Analysis of Statutory Requirements

6. As noted above, Section 10(a) of the Communications Act requires the Commission to forbear from applying to a telecommunications carrier or telecommunications service regulations or provisions of the Communications Act, if the Commission makes three specific determinations.[23] Moreover, in determining whether forbearance from enforcing a particular provision or regulation is in the public interest, the Commission is specifically required to consider whether forbearance will promote competitive market conditions, including the extent to which forbearance will enhance competition among providers of telecommunications services.[24] Accordingly, as explained in the following sections, we tentatively conclude that the Communications Act requires us to forbear from applying Section 203 of the Act and to adopt a policy of complete detariffing for international interexchange services with limited exceptions for permissive detariffing.

1. Are Tariff Filing Requirements Necessary to Ensure that the Charges, Practices, Classifications or Regulations for the International Interexchange Services of Non-dominant Interexchange Carriers Are Just and Reasonable, and Are Not Unjustly or Unreasonably Discriminatory?

7. Regarding the first criterion of Section 10, as the Commission has previously concluded with respect to the domestic services of non-dominant interexchange providers and the international services of CMRS providers for unaffiliated routes, we tentatively conclude that tariff filing requirements are not necessary to ensure that the charges, practices, classifications or regulations for the international interexchange services of non-dominant interexchange carriers are just and reasonable, and are not unjustly or unreasonably discriminatory.[25] We find as the basis for this tentative conclusion the fact that competitive conditions in the global telecommunications market have significantly improved in the recent past to reduce, in most cases, the likelihood of dramatic price increases or the wide-scale proliferation of unfavorable terms and conditions offered to consumers.[26] We further tentatively conclude that, to the extent there are market segments where increased competition has not benefited consumers, the filing of tariffs is not necessary to ensure that rates are just and reasonable and are not unjustly or unreasonably discriminatory.

8. In the 1995 *AT&T International Non-Dominance Order*, the Commission identified two "structural problems" in the international services market that prevented the market from being fully competitive and discouraged innovative price reductions: (1) inflated international accounting rates; and

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23 *See supra* note 7.

24 47 U.S.C. § 160(b).

25 *Detariffing Order*, 20,739-47 paras. 16-27. *CMRS Forbearance Order*, 13 FCC Rcd at 16,884-85, paras. 55-57.

26 *See supra* para. 4.

(2) the need for additional competition in the U.S. market.[27] Since 1995, the Commission has made significant progress in addressing these problems through the modification of its accounting rate and settlement policies and the adoption of policies that encourage entry into the U.S. international services market.

9. With respect to the concern about inflated international accounting rates, the Commission has made significant progress toward lowering accounting rates through reform of its accounting rate and international settlement policies.[28] The Commission has pursued a two-pronged approach to accounting rate reform by relaxing regulations governing accounting rate negotiations on routes where there is competition in the foreign market and by adopting "benchmark" settlement rates to help reduce rates on routes where foreign carriers are not subject to competitive pressures.[29] These accounting rate policies, in conjunction with market forces, have led to substantial decreases in settlement rates. Since 1995, the U.S. average accounting rate declined from 81¢ at year end 1995 to 38¢ in mid-2000, a decrease of 58%.[30]

10. The second concern has been alleviated by the increase in competition for international services spurred by commitments made by the U.S. and other countries in the WTO Basic Telecom Agreement. The Commission's *Foreign Participation Order*, adopted in response in part to the WTO Basic Telecom Agreement, established policies that encourage entry into the U.S. market by foreign carriers. Since the *Foreign Participation Order*'s "open entry" policies for WTO Members became effective on February 9, 1998, the Commission has granted more than 1,767 Section 214 authorizations to provide international telecommunications services and 376 of those carriers with authorizations are

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27 *See Motion of AT&T Corp. to be Declared Non-Dominant for International* Services, Order, 11 FCC Rcd 17,963 (1996) (*AT&T International Non-Dominance Order*). *Id.* at 17,994-95, paras. 82-85, and at 18,000, para. 101.

28 The current international accounting rate system was developed as part of a regulatory tradition in which international telecommunications services were supplied through a bilateral correspondent relationship between national monopoly carriers. An accounting rate is the price a U.S. facilities-based carrier negotiates with a foreign carrier for handling one minute of international telephone service. Each carrier's portion of the accounting rate is referred to the settlement rate. In almost all cases, the settlement rate is equal to one-half of the negotiated accounting rate.

29 *Benchmarks Order*, 12 FCC Rcd 19,806 (1997). The *Benchmarks Order* requires U.S. carriers to negotiate settlement rates that comply with the "benchmark" rates established by the Commission. The benchmark rates, and the transition schedule for achieving these rates, vary based upon a country's economic classification. In the *Benchmarks Order*, the Commission established benchmark settlement rates of $0.15 per settled minute for upper income countries; $0.19 for upper middle income and lower middle income countries; and $0.23 for lower income countries and countries with teledensity < 1. *Id.* at 19,815-16, para. 19. Since the *Benchmarks Order* took effect on January 1, 1998, at least 99% of the settled minutes for countries in the upper income category and 93% of the settled minutes for countries in the upper middle income category are in compliance with the benchmark rates. *See also Regulation of International Accounting Rates*, CC Docket No. 90-337, Phase II, Fourth Report and Order, 11 FCC Rcd 20,063 (1996) (*Flexibility Order*); *ISP Reform Order*, 14 FCC Rcd 7963 (1999).

30 The U.S. average accounting rate is a figure composed of the rates between the United States and all international points where each country's rate is weighted by its minutes to and from the United States.

providing minutes of services on international routes.[31]

11. We believe that our accounting rate reform policies, market forces, and increased competitive entry into the U.S. market have led to substantial reductions in consumer rates for international interexchange services. Since 1996, the average rate for international telephone service has decreased from $0.74 per minute in 1996 to $0.59 per minute in 1998.[32] Discount calling plan rates have decreased even more dramatically. For example, on the United States to United Kingdom route, discount residential rates for the peak period charged by the major carriers varied between $0.30 and $0.80 per minute in 1996; by 1999, these rates were as low as $0.10 per minute.[33] On the United States to Japan route, discount rates varied between $0.45 and $1.30 per minute in 1996; by 1999, these rates were as low as $0.16 per minute.[34] On the United States to India route, discount rates varied between $0.73 and $1.70 per minute in 1996; by 1999, these rates were as low as $0.55 per minute.[35] The Commission has previously determined that consumers generally are highly sensitive to prices and are likely to switch carriers to take advantage of price promotions.[36] Based upon this evidence of the positive impact of increased competition on consumer prices and consumer demand behavior, we tentatively conclude that tariffs are no longer necessary to ensure that charges, practices, classification or regulations are just and reasonable and are not unjustly or unreasonably discriminatory. We seek comment on this tentative conclusion and on whether there remains a justification to retain tariffs on certain routes on which sufficient competition may not exist.

12. We note, however, that despite competition among U.S. international carriers, we can identify two cases in which consumers have not benefited from lower rates. In the first case, rates remain excessive on routes on which competition has not taken hold in the foreign market. On such routes, excessive settlement costs are being passed through to U.S. consumers, even though there may be adequate competition on the U.S. end. Nevertheless, we do not believe that tariffs will benefit U.S. carriers or consumers in alleviating this problem regarding the lack of competition in foreign markets. Where foreign carriers possess market power, our International Settlements Policy (ISP) serves to ensure that, as a threshold protection, all U.S. carriers will receive nondiscriminatory settlement rates. In such instances, we expect that competition on the U.S. end obviates the need for tariffs in order to prevent harm to U.S. consumers. In the second case, rates remain excessive for consumers who do not subscribe to carriers' discount calling plans or take advantage of competitive dial-around rates. As a general trend over recent years, "basic" rates have increased from already high levels. These higher prices may be due to consumer information problems, potentially including consumers' difficulty in obtaining easily understandable and reliable information about calling plans and other competitive alternatives, such as dial-around services. We do not believe, however, that tariffs would cure the underlying cause

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31 FCC, Section 43.61 International Telecommunications Data, Fig. 6, January 2000.

32 FCC, Section 43.61 International Telecommunications Data, Table A1, 1996 and 1998.

33 Rates are based upon publicly available tariffs of AT&T, MCI Worldcom, and Sprint. Monthly recurring charges for calling plans for which these rates were available remained the same at $3.00 per month or dropped to $2.00 per month.

34 *See* note 31.

35 *Id.*

36 *AT&T International Non-dominance Order*, 11 FCC Rcd at 17,980, para. 46.

for this market anomaly. We believe that one of the primary reasons these consumers still pay high basic rates rather than discount rates is that they lack timely and reliable information about available rates. We tentatively conclude that the public disclosure requirement we propose below will help address this consumer information issue, particularly because we do not believe that tariff filings generally provide rate and service information that is easily understood by consumers and that permits them to compare and choose suitable calling plans. We believe that, as consumers become aware of the competitive options for international services, non-dominant interexchange carriers will be unable successfully to charge rates, or impose terms and conditions for international services that violate Sections 201 or 202 of the Act.[37] Moreover, as the Commission concluded in the *Detariffing Order*, we have the ability to remedy potential violations of the provisions of Sections 201 and 202 of the Act through the exercise of our authority to investigate and adjudicate complaints and to examine relevant legal and policy issues under Section 208 of the Act.[38] Thus, we tentatively find that our policies and enforcement authority, in conjunction with market forces and a more educated consumer, will generally ensure that the rates, practices, and classifications of non-dominant interexchange carriers for international interexchange services will be just and reasonable and not unjustly or unreasonably discriminatory. We seek comment on this tentative conclusion.

13. As we discuss further below, we propose to adopt a policy of complete detariffing for non-dominant interexchange carriers that, along with competitive market forces, will improve market efficiency by permitting carriers to respond to the dynamics of the marketplace and will further the goals of Sections 201 and 202 of the Act. We seek comment on this tentative conclusion that our proposal to adopt complete detariffing meets the first prong of the statutory forbearance criteria of Section 10(a).[39]

2. Are Tariff Filing Requirements for the International Interexchange Services of Non-dominant Interexchange Carriers Necessary for the Protection of Consumers?

14. We also tentatively conclude that requiring non-dominant interexchange carriers to file tariffs for international offerings is not necessary for the protection of consumers of interexchange services. To the contrary, we believe that tariff filing requirements, though initially required to prevent discrimination among consumers, may harm consumers by undermining the development of competition and possibly leading to higher rates by stifling price reductions and marketing innovations.

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37 47 U.S.C. §§ 201-202. Section 201(b) requires that "[a]ll charges, practices, classifications, and regulations for and in connection with such communication services, shall be just and reasonable, and any such charge, practice, classification or regulation that is unjust or unreasonable is hereby declared to be unlawful." 47 U.S.C. § 201(b). Section 202 declares it "unlawful for an common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service . . . ." 47 U.S.C. § 202.

38 47 U.S.C. § 208. *Detariffing Order*, 11 FCC Rcd at 20,742-43, para. 21 (ability under Section 208 to investigate and adjudicate complaints is sufficient to address illegal carrier conduct); *Competitive Carrier Sixth Report and Order*, 99 FCC 2d at 1029, para. 12 (tariffs "are not essential" to the Commission's ability to ensure that carriers' rates comply with the Act, because the Commission has "other means to ensure our enforcement of the mandates of the Act," – including the Commission's Section 208 complaint process); *CMRS Second Report and Order* at 1478-79.

39 47 U.S.C. § 160(a)(1).

15. In accordance with our conclusions in the *Detariffing Order on Reconsideration*,[40] we tentatively conclude that tariffs for international interexchange services may have negative consequences for consumers because of the application of the "filed-rate" doctrine.[41] Section 203(c) requires a carrier to provide service at the rates, terms, and conditions set forth in the tariffs on file with the Commission until the carrier files a superseding tariff canceling, or changing the rates, terms, and conditions in the tariffed offering.[42] Therefore, if a carrier has signed an underlying contract with a customer on different terms from those contained in the tariff, Section 203(c), in most circumstances, requires the carrier to provide the service on the terms set forth in the tariff. Because of carriers' rights to invoke the "filed-rate" doctrine and bind customers to tariffed offerings, tariffs, even if filed on a permissive basis, preclude consumers from pursuing remedies under state consumer protection and contract laws that are generally available to consumers in any other unregulated, competitive environment. We tentatively conclude that only with complete detariffing can we be certain to avoid the uncertainty, confusion, and potential harm to consumers associated with the "filed-rate" doctrine.[43] We believe that the ability of a carrier to alter or abrogate a contract unilaterally undermines consumers' legitimate expectations and that the effects of the "filed-rate" doctrine are particularly harmful to mass market residential and small business consumers who may not be as savvy and informed as larger business users and, therefore, are more reliant upon marketing agents and carrier advertisements.[44] For example, most residential customers may generally assume that carriers would not change their offerings without actual notice to a customer; nevertheless, in the event of a dispute over a rate change, a customer would be bound to the rates, terms and conditions of the tariff. Therefore, tariffing requirements may not only impair market efficiency, as we discuss in conjunction with our evaluation of the third criterion of Section 10(a), but may also harm and increase costs to consumers.

16. We tentatively conclude that detariffing will better protect consumers against rates, terms and conditions that violate the Communications Act because it will permit carriers to respond to price and service changes in an unregulated manner.[45] Moreover, as we discussed above, we believe that

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40 *Detariffing Order on Reconsideration*, 12 FCC Rcd at 15,022-24, paras. 12-13.

41 It is well established that, pursuant to the "filed-rate" doctrine, in a situation where a filed tariff rate, term or condition differs from a rate, term, or condition set in a non-tariffed carrier-customer contract, the carrier is required to assess the tariff rate, term or condition. *See Armour Packing Co. v. United States*, 209 U.S. 56 (1908); *American Broadcasting Cos., Inc. v. FCC*, 643 F.2d 818 (D.C. Cir. 1980); *see also Aero Trucking, Inc. v. Regal Tube Co.*, 594 F.2d 619 (7th Cir. 1979); *Farley Terminal Co., Inc. v. Atchison, T. & S.F. Ry.*, 522 F.2d 1095 (9th Cir.), *cert. denied*, 423 U.S. 996 (1975). Consequently, if a carrier unilaterally changes a rate by filing a tariff revision, the newly filed rate becomes the applicable rate unless the revised rate is found to be unjust, unreasonable, or unlawful under the Communications Act. *See* 47 U.S.C. § 201(b); *see also Maislin Industries, U.S., Inc. v. Primary Steel, Inc.*, 497 U.S. 116 (1990).

42 47 U.S.C. § 203(c).

43 *Detariffing Order*, 11 FCC Rcd at 20,765-66, para. 60.

44 We note that the Commission recently issued jointly with the Federal Trade Commission guidelines for the marketing practices of telecommunications common carriers in response to concerns about the effects of deceptive advertising on consumers. *In the Matter of Joint FCC/FTC Policy Statement for the Advertising of Dial-Around and Other Long-Distance Services to Consumers*, Policy Statement, 15 FCC Rcd 8654 (2000).

45 *Detariffing Order*, 11 FCC Rcd at 20,750, para. 37.

the Commission's enforcement authority and market forces will afford sufficient protection for consumers. We seek comment on our proposal to avoid these harms to consumers by adopting a complete detariffing regime that we believe satisfies the second prong of the statutory forbearance criteria of Section 10(a).[46]

3. Is Forbearance from Applying Section 203 Tariff Filing Requirements to the International Interexchange Services Offered by Non-Dominant Interexchange Carriers Consistent with the Public Interest?

17. Finally, we tentatively conclude that not permitting non-dominant interexchange carriers to file tariffs for the provision of international interexchange services is consistent with the public interest, with limited exceptions discussed below. Section 10(b) specifically requires the Commission, in determining whether forbearance from enforcing a provision of the Communications Act or a regulation is in the public interest, to consider whether forbearance will promote competitive market conditions, including the extent to which forbearance will enhance competition among providers of telecommunications services.[47] As we concluded with respect to domestic, interstate, interexchange services, we tentatively conclude that a deregulatory detariffing policy that does not require or permit interexchange carrier tariffs for international interexchange services will create the most pro-competitive conditions for the international interexchange marketplace. Complete detariffing will enhance competition among providers of such services, promote competitive market conditions, and achieve other objectives that are in the public interest, including eliminating the possible invocation of the "filed-rate" doctrine by non-dominant interexchange carriers and establishing market conditions that more closely resemble an unregulated environment.[48] On the other hand, permissive detariffing for international interexchange services would generally undermine several of these pro-competitive benefits, and, therefore, would not be in the public interest. Thus, we tentatively conclude that we should adopt a policy of complete detariffing for international interexchange sevrices.

18. In the domestic detariffing proceeding, the Commission concluded that requiring or permitting non-dominant carriers under a permissive detariffing policy to file tariffs impedes vigorous competition in the market for interexchange services by : (1) removing the incentives for competitive price discounting; (2) reducing or eliminating carriers' ability to make rapid, efficient responses to changes in demand and cost; (3) imposing costs on carriers that attempt to make new offerings; and (4) preventing or discouraging consumers from seeking or obtaining service arrangements specifically tailored to their needs.[49] In contrast, a policy of complete detariffing will enable a legal relationship between carriers and customers that mirrors those in unregulated competitive markets. In the *Detariffing Order*, the Commission determined that the elimination of non-dominant carrier tariff filings would prevent potential situations in which carriers refuse to negotiate with customers based upon the Commission's tariff filing and review processes.[50] Therefore, under a policy of complete detariffing,

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46 47 U.S.C. § 160(a).

47 47 U.S.C. § 160(b).

48 *Detariffing Order*, 11 FCC Rcd at 20,773, para. 4, and at 20,760, para 52.

49 *Competitive Carrier Sixth Report and Order*, 99 FCC 2d at 1030, para. 13; *Detariffing Order*, 11 FCC Rcd at 20,760-61, para. 53.

carriers would be more responsive to customer demands and offer a greater variety of price and service packages to suit customer needs.

19. We tentatively conclude, given current international interexchange market conditions, that the Commission's analysis of the benefits of complete detariffing for domestic, interstate, interexchange services applies to international interexchange services. In addition, as we discuss above, the absence of tariffs will also eliminate the possible invocation by carriers of the "filed-rate" doctrine and its resulting potential harm to consumers. As we described in the previous section, if a carrier has signed an underlying contract with a customer on different terms from those contained in the tariff, Section 203(c), in most circumstances, requires the carrier to provide the service on the terms set forth in the tariff. Thus, application of the "filed-rate" doctrine harms consumers by permitting carriers unilaterally to alter rates, terms, and conditions. Therefore, in order to establish a more market-based, deregulatory environment that will help prevent negative consequences for consumers, we tentatively conclude that, with a few exceptions noted below, it would be in the public interest to prohibit non-dominant interexchange carriers from filing tariffs with respect to international interexchange services. In making this tentative conclusion, we note that detariffing will promote flexibility and reduce the regulatory burdens on all non-dominant providers of international interexchange services, including smaller carriers. We seek comment on this tentative conclusion and whether complete detariffing is in the public interest and satisfies the third prong of the statutory forbearance criteria in Section 10(a).[51]

20. In a market environment without tariffs, carriers and customers must enter into legal contracts for services. The Commission concluded in the domestic detariffing proceeding that because of the difficulty of establishing a contractual legal relationship between carriers and customers in two limited circumstances, carriers should be permitted to file tariffs for their services. Similarly, we tentatively conclude here that permissive detariffing, as opposed to complete detariffing, is in the public interest and warranted with respect to: (1) international interexchange direct-dial services to which end-users obtain access by dialing a carrier access code, *i.e.*, 10-10-XXX, ("dial-around 1+ services"), and (2) international interexchange services provided during the initial forty-five days of service or until there is a written contract between the carrier and the customer, in those limited circumstances in which a prospective customer contacts the LEC to select an interexchange carrier or to initiate a PIC change ("LEC-implemented new customer services").[52] Regarding casual calling services,[53] neither contract law

(Continued from previous page)

50 *Detariffing Order*, 11 FCC Rcd at 20,761, para. 54 (noting the accounts of commenters claiming that carriers refuse to negotiate requested terms and conditions on the grounds that the requested terms and conditions are not contained in carriers' tariffs and that the Commission would reject any differing terms and conditions).

51 47 U.S.C. § 160(a).

52 "1+ dial-around services" are transactional services for which a consumer can "dial-around" its presubscribed long distance carrier by dialing a carrier access code, *i.e.*, 10-10-XXX, and access the network of another long distance carrier. "LEC-implemented new customer services" describe the services provided by a long distance carrier that a customer has selected by contacting its local exchange carrier rather than the long distance carrier directly. In both circumstances, a long distance carrier would likely be unable to contact the customer to provide notice of rate and service information prior to the completion of the call. *Detariffing Order on Reconsideration*, 12 FCC Rcd 15,014 at 15,026-41, paras. 18-44.

53 Casual calling services are those services that do not require the calling party to establish an account with an interexchange carrier or otherwise presubscribe to a service.

nor the provision of credit card information or a billing number guarantees that non-dominant interexchange carriers will have an enforceable contract with customers of casual calling services if callers do not have notice of a carrier's rates, terms, and conditions prior to completion of a call.[54] For most casual calling services, notice is not a problem, because, as we determined in the domestic proceeding, most casual calling services already require intervention by an interexchange carrier that can provide notice to customers prior to the completion of a call.[55] Yet, with regard to a particular subset of casual calling services, dial-around 1+ services, notice remains unlikely. A means of ensuring the establishment of an enforceable contract with customers of dial-around 1+ services has not been determined because interexchange carriers have not implemented universally the technology to allow them to distinguish a caller using dial-around 1+ services from direct dial 1+ services.[56] Therefore, we tentatively conclude that adoption of complete detariffing at this time for dial-around 1+ services would not be in the public interest until the cost burdens on non-dominant interexchange carriers to install the necessary signalling equipment to distinguish dial-around 1+ services and to provide recorded announcements regarding information about rates, terms, and conditions of dial-around 1+ services to customers are reduced; or alternative ways to notify customers become more widespread.[57] We seek comment on this tentative conclusion and if there are any other unique issues with respect to the provision of international casual calling services.

21. Additionally, we tentatively conclude that permissive detariffing is appropriate for the initial forty-five days of non-dominant interexchange carriers' provision of international interexchange mass market services to new residential and business customers, or until a written contract is consummated, whichever is earlier. When a new customer chooses only to contact a LEC to select an interexchange carrier or intiate a PIC-change, the interexchange carrier has no direct contact with the customer and may not be able to ensure that a legal relationship is established with that customer for some period of time. Because customers choose their interexchange carrier for both domestic and international services, we believe that the conclusions in the domestic proceeding regarding LEC-implemented new customer services should apply equally to both domestic and international interexchange services. As we previously concluded in the domestic proceeding, a period of forty-five days appears to be reasonable to assume that a carrier-customer contract for international interexchange services can be established.[58] Therefore, we tentatively conclude that allowing on a permissive basis non-dominant interexchange carriers to file tariffs for dial-around 1+ services and LEC-implemented new customer services for a period of forty-five days or until there is a written contract between the carrier and customer, whichever is earlier, is in the public interest. We seek comment on all of these tentative conclusions and the accompanying modifications to our rules.[59]

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54 *Detariffing Order on Reconsideration*, 12 FCC Rcd at 15,031-32, para. 28.

55 *Id.* at 15,032-33, para. 30.

56 *Id.* at 15,034, para. 32.

57 *Id.* at 15,034-35, para. 33.

58 *Id.* at 15,037-38, para. 39.

59 *See* Appendix A.

B. Maintenance and Disclosure of Price and Service Information

22. While we recognize the benefits of complete detariffing to consumers, we also believe that consumers must have adequate information concerning carriers' rates, terms and conditions to ensure carrier compliance with the requirements of the Act and in order for consumers to determine the most appropriate rate plans that may meet their individual calling patterns. Pursuant to our conclusions in the *Detariffing Order*, we do not believe that tariffs are the only or best means of disseminating such information about international interexchange services.[60] Customers will still receive rate information through the billing process, and carriers will likely be obligated, as part of their contractual relationship with customers, to provide notice of rate changes, etc. Moreover, customers, particularly mass market customers rarely, if ever, consult tariff filings and when they do, they find them difficult to understand.

23. Although we believe most carriers will have incentives to provide some information about their offerings in an accessible format in order to remain competitive for consumers, we believe that consumers may have difficulty obtaining complete information concerning all of the international interexchange service offerings available. Without ready access to this information, some consumers may have difficulty determining the best available calling plans for their individual usage. In addition, we believe that information about rates, terms and conditions of service offerings will assist consumers in bringing complaints, if necessary, to enforce the provisions of the Act and the Commission's rules. Accordingly, we propose extending to non-dominant interexchange providers of international services the requirement, currently applicable to non-dominant interexchange providers of domestic services, that they disclose information about their rates, terms and conditions to the public; maintain price and service information regarding the international offerings that can be submitted to the Commission upon request; and post information about their offerings on their Internet websites. We seek comment on these proposed requirements and the resulting proposed modifications to our rules.

24. We note that concerns were raised in the domestic detariffing proceeding about the potential harm to competition from requiring public disclosure of rate and service information because it would increase the ability of carriers to engage in tacit price coordination.[61] We found, however, that potential harms about collusive behavior resulting from public disclosure generally are outweighed by the benefits of public disclosure for several reasons. First, as set forth in the *Detariffing Second Order on Reconsideration,* there is abundant evidence that disclosure of information is beneficial to competition. The evidence to the contrary is "sparse and indeterminate."[62] Generally, in a marketplace with many competitors and low barriers to entry, the likelihood of oligopolistic behavior is low. Second, even if there were conclusive evidence of tacit price coordination in the international interexchange marketplace, a public disclosure requirement would pose little, if any, additional risk of harm to competition. As the Commission has previously recognized, nondominant interexchange carriers will still obtain information about their competitors' rates and service offerings regardless of whether we require public disclosure.[63] Carriers generally have far more resources than residential and small business consumers to obtain this information directly. Therefore, consumers will potentially experience

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60 *Detariffing Order*, 11 FCC Rcd at 20,745-46, para. 25.

61 *Detariffing Order on Reconsideration*, 12 FCC Rcd at 15,050-54, paras. 66-73.

62 *Detariffing Second Order on Reconsideration*, 14 FCC Rcd at 6013-15, para. 16.

63 *Detariffing Order on Reconsideration*, 12 FCC Rcd at 15,052, para. 69.

the most harm in the absence of a public disclosure requirement. We tentatively conclude consistent with our findings in the *Detariffing Second Order on Reconsideration*, the best balance is struck in favor of consumer concerns and propose that information about rates, terms, and conditions be made available to the public.[64]

25. In order to comply with the public disclosure requirement, we do not propose requiring that information about rates, terms and conditions be provided in any particular format or any particular location. We do propose, however, that carriers make such information available to the public in at least one location during regular business hours and that carriers that have Internet websites post this information on-line in a timely and easily accessible manner with regular updates.[65] Also, we propose that carriers inform the public that this information is available when responding to consumer inquiries or complaints and specify the manner in which consumers may obtain the information and indicate on the title or first page of their cancelled tariffs the website address and the address of the public information site where the rates, terms, and conditions for their international interexchange services can be found.[66]

26. Finally, consistent with the requirements we adopted in the *Detariffing Order*, we tentatively conclude that non-dominant interexchange carriers must maintain price and service information regarding all of their international interexchange offerings and that they be able to submit this information within ten business days to the Commission upon request, consistent with the requirements we applied to domestic, interstate, interexchange services.[67] We anticipate that this information will also include information disclosed to the public, as well as supporting information regarding the rates, terms, and conditions of the carriers' international interexchange offerings. We also propose to require non-dominant interexchange carriers to retain the foregoing information for a period of at least two years and six months following the date that a carrier ceases to provide services on such rates, terms, and conditions, in order to afford the Commission enough time to notify a carrier of the filing of a complaint, which generally must be commenced within two years from the time the cause of action accrues. We seek comment on these tentative conclusions.

C. Application of Proposed Policies to U.S.-Authorized Affiliated Carriers Classified as Dominant for Specific International Routes.

27. In its 1997 *Benchmarks Order*, the Commission addressed the potential of a U.S. carrier to engage in an anticompetitive price squeeze against other carriers in its provision of international facilities-based switched services that would harm competition in the U.S. International Messaging Telephone Services (IMTS) market.[68] A "price squeeze" is a predatory tactic in which a U.S. affiliate of a foreign carrier sets its prices so close to the international settlement rate, a significant cost component in the provision of international interexchange services that is paid to foreign carriers, that it precludes

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64 *Detariffing Second Order on Reconsideration*, 14 FCC Rcd at 6015-16, para. 18.

65 *Id.* at 6015-16, para. 18.

66 *Detariffing Order*, 11 FCC Rcd at 20,776-77, paras. 84-86.

67 *Id.* at 20,777-78, para. 87. We note that we do not propose requiring that carriers make such supporting documentation available to the public.

68 *Benchmarks Order*, 12 FCC Rcd at 19,896, para. 192.

other carriers from competing without losing money. In order to prevent the competitive distortion of a price squeeze, the Commission imposed a condition on U.S. carriers' section 214 authorizations.[69] The condition requires that before a U.S. carrier may provide facilities-based switched or private line service on a route where it is affiliated with a foreign carrier with market power, the foreign affiliate must offer all U.S. carriers on the route a rate for settling traffic that is at or below the relevant benchmark rate. In adopting the condition, the Commission stated that it would take enforcement action if it determined that a carrier is engaging in price squeeze behavior. As a trigger to determine when price squeeze behavior has occurred, the Commission established a rebuttable presumption that a carrier has engaged in price squeeze behavior if any of a carrier's tariffed collection rates on an affiliated route are less than the carrier's average variable costs on that route, which the Commission defined as a carrier's net settlement rate plus any originating access charges.[70]

28. We seek comment on whether our proposal to require complete detariffing will affect our ability to monitor potential price squeeze behavior. We tentatively conclude that our proposal will not do so because of our proposed requirement that carriers maintain price and service information, including documents supporting the rates, terms, and conditions of the carriers' international interexchange offering.[71] As we discuss above, we tentatively conclude that, in addition to the public disclosure requirement, carriers should be able to produce price and service information about their international interexchange offerings in a timely manner, *i.e.*, within ten business days of a Commission request. We believe that this maintenance of information requirement will address any concerns regarding potential anticompetitive pricing strategies by U.S. carriers classified as dominant due to their foreign affiliations. Therefore, we seek comment on whether we should continue to require facilities-based carriers whose foreign affiliates have market power to file tariffs for the purpose of detecting price squeeze behavior on affiliated routes and whether the maintenance of price and service information is a sufficient alternative to the monitoring of tariffs for purposes of detecting price squeeze behavior by facilities-based carriers affiliated with foreign carriers that possess market power.

D. Complete Detariffing of International CMRS Services

29. In the *CMRS Second Report and Order*, the Commission adopted complete detariffing for CMRS providers of domestic services pursuant to its authority in Section 332 of the Act.[72] In 1998, the Commission adopted permissive detariffing of international services to unaffiliated points for CMRS providers in its *CMRS Forbearance Order*.[73] In that order, the Commission determined that the forbearance criteria of Section 10(a)(1) and (a)(2) were satisfied. The Commission found that tariffs are unnecessary to ensure that unaffiliated CMRS providers' charges, practices, classifications, or regulations for international interexchange services are just and reasonable and are unnecessary to

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69 *Id.* at 19,911-12, para. 231. In the Commission's 1999 *Benchmarks Reconsideration Order*, the Commission further narrowed the application of this condition to U.S. carriers with foreign carrier affiliates that possess market power. *Benchmarks Reconsideration Order*, 14 FCC Rcd 9256 (1999).

70 *Benchmarks Order*, 12 FCC Rcd at 19,908-09, para. 224.

71 *See supra* Part II.B.

72 *CMRS Second Report and Order*, 9 FCC Rcd 1411 (1994). 47 C.F.R. § 332.

73 *CMRS Forbearance Order*, 13 FCC Rcd at 16,884, para. 56.

protect consumers.[74] Nevertheless, the Commission determined that permissive detariffing, rather than complete detariffing, would reduce transaction costs and administrative burdens on service providers; therefore, the Commission adopted permissive detariffing as consistent with the public interest under Section 10(a)(3).[75] In this Notice, we propose revisiting this conclusion that permissive detariffing of CMRS providers for international services on unaffiliated routes is in the public interest. Instead, we tentatively conclude that our analysis regarding the public interest need for complete detariffing of international interexchange services by non-dominant carriers in order to protect consumers and further competition applies equally to CMRS providers of international services. Therefore, the complete detariffing of international interexchange services, as we have previously found with respect to domestic services provided by CMRS carriers, is warranted.[76]

30. Our previous concern with complete detariffing was that it would increase the transactional and administrative burden on carriers by forcing them to contact and negotiate individual contracts with customers, rather than by voluntarily filing, pursuant to permissive detariffing, a tariff for the service with the Commission. We believe that, consistent with our analysis of domestic detariffing, these burdens are minimal. As we concluded with respect to the same concern in the *Detariffing Order*, tariffs are not the only feasible way for carriers to establish legal relationships with customers.[77] Non-dominant carriers do not necessarily need to negotiate contracts for service with each, individual customer and could find alternatives such as issuing short, standard contracts with basic information about rates, terms and conditions. We believe that these alternatives to tariffs are not unduly burdensome and warrant our review of our decision to require permissive detariffing of international services by CMRS providers. Moreover, we believe the negative consequences for consumers of the "filed-rate" doctrine likewise exist for consumers of international CMRS services and can only be eliminated with complete detariffing.[78] In addition, as discussed above, we find persuasive the possibility that permissive detariffing for international interexchange services would generally undermine the pro-competitive benefits of an unregulated marketplace by not permitting carriers to respond quickly to changes in service offerings.[79]

31. With respect to affiliated routes, the Commission concluded in the *CMRS Forbearance Order* that it should not detariff CMRS providers serving international routes where the CMRS carrier is affiliated with a foreign carrier that terminates U.S. international traffic.[80] The Commission's reasoning was based upon the Commission's conclusions in the *Benchmarks Order* regarding the potential for anticompetitive price squeeze behavior on U.S. carriers' affiliated routes.[81] As we discussed and proposed above with respect to the detariffing of non-dominant interexchange carriers that are affiliated

74 *Id.* at 16,885, paras. 57-58.

75 *Id.* at 16,885-86, para 59.

76 *See supra* Parts II.A.1-3.

77 *Detariffing Order*, 11 FCC Rcd at 20,762-65, paras. 56-59.

78 *See supra* Part II.A.2.

79 *See supra* Part II.A.3.

80 *CMRS Forbearance Order*, 13 FCC Rcd at 16,886-87, para. 60.

81 *See supra* Part II.C.

with foreign carriers with market power, we believe that our proposed requirement for maintenance of price and service information will address any concerns that U.S. carriers on affiliated routes may engage in price squeeze strategies.[82] Therefore, we also tentatively conclude that we should extend the application of the requirement that carriers maintain price and service information to CMRS providers of international interexchange services for only those routes on which they are affiliated with foreign carriers that possess market power. We tentatively conclude that we should not extend to CMRS providers the other requirements discussed in this Notice. In this regard, we note that such requirements are not currently applicable to the domestic services of CMRS providers. We seek comment on these tentative conclusions and the proposed modifications to our rules.

E. Filing of Carrier-to-Carrier Contracts

32. Section 43.51 of the Commission's rules requires common carriers providing domestic services and dominant carriers providing international services to file with the Commission copies of carrier-to-carrier contracts for domestic and international services, respectively. In light of the proposed deregulatory policies we set forth above to detariff the international interexchange services of non-dominant carriers, we propose modifying Section 43.51 to simplify the language of the provision and clarify that the rule only applies to U.S. carrier contracts for common carrier service between the U.S. and foreign points involving: (1) a foreign carrier that has market power in its foreign market, or (2) a U.S. carrier that has been classified as dominant on any route included in the contract, except for U.S. carriers classified as dominant on a particular route due only to a foreign carrier affiliation pursuant to Section 63.10.[83] Under the detariffing proposals set forward in this *Notice*, non-dominant carriers would disclose information about their international service offerings to the public, as well as maintain price and service information in order for the Commission to monitor compliance with its rules and policies. In this proceeding we address whether we should require the filing of these types of contracts with the Commission on an ongoing basis, regardless of whether they are currently required under the rule. We seek comment on the effect of Section 43.51 on our proposed detariffing policies and the accompanying proposed modifications to our rules. [84]

33. Section 43.51, among other things,[85] relates to the filing by a common carrier of contracts, agreements, concessions, licenses, authorizations or other arrangements to which it is a party.[86]

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82 *Id. See supra* para. 26.

83 47 C.F.R. §§ 63.10, 43.51.

84 47 C.F.R. § 43.51. We note that the Commission has forborne from applying the contract filing provisions of 47 U.S.C. § 211 to CMRS providers. *See Implementation of Sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services,* GN Docket No. 93-252, 9 FCC Rcd 1411, 1480, 1511, paras. 181, 272, 275 (1994). Further, the Commission's rules specifically state that CMRS providers are not required to "[f]ile with the Commission copies of contracts entered into with other carriers . . . ." 47 C.F.R. § 20.15(b)(1). We will continue to follow that policy, and do not intend our proposals in this proceeding regarding the filing of contracts to apply to CMRS providers.

85 Section 43.51 also contains a reporting requirement that applies to any U.S. carrier that interconnects an international private line to the U.S. public switched network at the carrier's switch, 47 C.F.R. § 43.51(d), and the Commission's international settlements policy, 47 C.F.R. § 43.51(e).

86 *See* 47 C.F.R. § 43.51(a).

In that regard, Section 43.51 implements Section 211 of the Communications Act.[87] Section 211(a) requires that every carrier file contracts with other carriers affecting traffic regulated under the Communications Act.[88] Section 211(b), however, provides that the Commission "shall also have the authority to exempt any carrier from submitting copies of such minor contracts as the Commission may determine."[89] The Commission has found that Section 211(b) gives the Commission "the discretion to exempt carriers from filing contracts, including those referred to in Section 211(a), when we determine that those contracts are of minor significance to the regulatory scheme."[90]

34. The filing of copies of contracts between carriers helps the Commission to monitor whether carriers are following the Commission's rules or are otherwise acting in an anti-competitive manner.[91] The Commission does not require that the contracts be filed, however, when the Commission determines that filing a copy of a contract is not useful in monitoring a carrier or that the burdens placed on the Commission and the carriers outweigh the benefits of having the carriers file copies of contracts.[92] The Commission has found that in those situations, to the extent that a carrier acts in an anti-competitive manner or otherwise violates our rules or policies, the Commission can obtain these contracts and seek remedies against such improper activity through the Section 208 complaint process initiated by either a competitor or the Commission.[93] The Commission also retains authority under Section 211 to require the filing of copies of contracts when it is necessary for implementation and review of compliance with our rules and policies.[94]

35. In the context of common carrier service between the U.S. and foreign points, the Commission has been concerned with arrangements involving foreign carriers that possess market power on the foreign end of a route. For example, with regard to the International Settlements Policy (ISP),[95] the Commission is concerned that a foreign carrier with market power would have the ability to

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87 47 U.S.C. § 211.

88 47 U.S.C. § 211(a).

89 47 U.S.C. § 211(b).

90 *Amendment of Sections 43.51, 43.52, 43.53, 43.54 and 43.74 of the Commission's Rules to Eliminate Certain Reporting Requirements*, CC Docket No. 85-346, Report and Order, 1 FCC Rcd 933, 934, para. 10 (1986) (*Reporting Streamlining Order*).

91 *See, e.g, Foreign Participation Order*, 12 FCC Rcd at 24007, para. 259 ("[O]ur contract filing requirement in Section 43.51 of the Commission's rules enables us to detect instances where carriers enter into arrangements that are inconsistent with our rules and policies.").

92 *See Reporting Streamlining Order*, 1 FCC Rcd 933, 934, paras. 2-4, 10.

93 47 U.S.C. § 208. *See Detariffing Order on Reconsideration*, 12 FCC Rcd at 15051, para. 68. ("[Commission] can remedy any carrier conduct that violates the requirement that carriers make individually-negotiated service arrangements available to similarly-situated customers through the section 208 complaint process. . .").

94 *Reporting Streamlining Order*, 1 FCC Rcd at 933, para. 3.

95 The ISP, among other things, requires U.S. telecommunications carriers to pay nondiscriminatory rates for termination of international traffic in foreign countries. 47 C.F.R. § 43.51(d).

"whipsaw" U.S. carriers because the foreign carrier may unilaterally set the prices, terms and conditions under which U.S. carriers are able to exchange traffic.[96] The filing requirements in Section 43.51 enable the Commission to enforce the ISP and maintain regulatory oversight of accounting rate agreements.[97] In the *ISP Reform Order*, the Commission found, however, that foreign carriers that lack market power have no ability to whipsaw U.S. carriers, and the ISP therefore should not apply to settlements arrangements between U.S. carriers and foreign carriers that lack market power. Thus, it concluded that requiring the filing of copies of contracts with such foreign carriers is an unnecessary regulatory burden, and determined that U.S. carriers that conclude settlement rate arrangements with foreign carriers that lack market power in the foreign market no longer need to file copies of those contracts.[98]

36. Similarly, with regard to the "No Special Concessions" rule, the Commission has found that an exclusive arrangement between a U.S. carrier and a foreign carrier that lacks market power would not result in harm to competition and consumers in the U.S. market. Accordingly, the "No Special Concessions" rule prohibits U.S. international carriers from agreeing to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market.[99] The rule is limited to arrangements with foreign carriers that have market power in their home market because if a foreign carrier with market power were to enter into an exclusive arrangement, competing carriers on the foreign end, if any, might not have sufficient capacity to accommodate rival U.S. carriers' needs.[100] If the foreign carrier lacks market power in the foreign market, on the other hand, the Commission has found that it would not have the ability to adversely affect competition in the U.S. market.[101] Consequently, in the *ISP Reform Order*, the Commission also amended the "No Special Concessions" rule to eliminate the requirement that a U.S. carrier file a copy of an exclusive arrangement with a foreign carrier lacking market power under Section 43.51.[102]

37. In the *ISP Reform Order*, the Commission further found that the "Section 43.51 contract

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96 "Whipsawing" is a practice that occurs when a foreign carrier with monopoly power pits competing U.S. carriers against one another in settlement rate negotiations, exploiting the fact that U.S. carriers unwilling to pay settlement rates demanded by foreign carriers would lose business on those routes to higher-bidding U.S. competitors, as there are no alternative means of terminating international traffic. The Commission has determined that this practice can be detrimental to U.S. consumers as it can drive up the cost to U.S. carriers of terminating international traffic in foreign markets and hence, the prices to U.S. consumers. *ISP Reform Order*, 14 FCC Rcd at 79773-74, para. 31.

97 *See 1998 Biennial Regulatory Review: Reform of the International Settlements Policy and Associated Filing Requirements*, IB Docket Nos. 98-148 and 95-22, CC Docket No. 90-337 (Phase II), Notice of Proposed Rule Making, 13 FCC Rcd 15,320 at 15,328-29, para. 21 (*ISP Reform NPRM*).

98 *ISP Reform Order*, 14 FCC Rcd at 7971-73, paras. 21-29. *See also* 47 C.F.R. § 43.51(g).

99 47 C.F.R. § 63.14. The specific types of arrangements covered by the "No Special Concessions" rule are set forth in 47 C.F.R. § 63.14(b). *See also Foreign Participation Order*, 12 FCC Rcd at 23960-62, para. 163 (carriers must file contracts under Section 43.51).

100 *Foreign Participation Order*, 12 FCC Rcd at 23,958, para. 157.

101 *Id.* at 23,958, para. 158; *ISP Reform Order*, 14 FCC Rcd at 7971-73, paras. 21-29.

102 *ISP Reform Order*, 14 FCC Rcd at 7980-81, para. 49.

filing requirement should no longer apply to *any* U.S. carrier arrangement with a foreign carrier that lacks market power."[103] We find, however, that the language of Section 43.51 is difficult to follow and somewhat unclear on this issue. We propose to amend Section 43.51 to simplify the language of the rule and make clear that the rule generally only requires the filing of contracts for common carrier service between the U.S. and foreign points when the foreign carrier has market power in the foreign market.[104]

38. The Commission has also found that it is not necessary to require the filing of copies of contracts between non-dominant carriers for U.S.-domestic services because the carriers do not have market power.[105] The filing of these contracts is not necessary for the Commission to detect possible anti-competitive behavior by carriers because neither carrier has market power. We believe that carriers that lack market power will generally be unable to engage in anticompetitive behavior because of their lack of control over bottleneck facilities and competitive pressures from other carriers. We tentatively conclude that the same analysis applies to contracts between U.S. carriers regarding common carrier service between the U.S. and foreign points. We therefore propose to amend Section 43.51 to eliminate the filing requirement if both contracting U.S. carriers lack market power.[106] We seek comment on this tentative conclusion and proposal. We also seek comment on whether there are factors unique to the provision of international service which make the filing of contracts necessary.

39. We also seek comment on whether to amend Section 43.51(a) to remove the language regarding rights granted to a U.S. carrier by a foreign government.[107] As an initial matter, we find this language confusing because it refers to rights granted by a foreign government while the rest of the subsection deals with contracts between carriers. We also question whether it is necessary to require carriers to file copies of agreements with foreign governments. As discussed above, we require the filing of copies of contracts to monitor whether carriers with market power are acting in a manner that may adversely affect competition in the U.S. market. As a general matter, we do not have that concern with agreements between U.S. carriers and foreign governments. We note that to the extent that a foreign

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103 *Id.* at 7972, para. 29 (citing *ISP Reform NPRM*, 13 FCC Rcd 15,320, 15,328-29, para. 21) (emphasis added).

104 Concurrently with the release of the *ISP Reform Order*, the Commission released a Public Notice containing a list of foreign carriers that are presumed to possess market power in foreign markets for purposes of determining when to apply the ISP, the "No Special Concessions" rule, and the Commission's rules governing the provision of switched services over private lines. *See List of Foreign Telecommunications Carriers that are Presumed to Possess Market Power in Foreign Telecommunications Markets*, Public Notice DA 99-809 (correction rel. June 18, 1999). The list will be updated periodically. The most recent version is available from the International Bureau's World Wide Web site at <http://www.fcc.gov/ib>.

105 *See Amendment of Sections 43.51, 43.52, 43.53, 43.54 and 43.74 of the Commission's Rules to Eliminate Certain Reporting Requirements*, CC Docket No. 85-346, Notice of Proposed Rule Making, 102 FCC 2d 531, para. 4 ("Due to non-dominant carriers' lack of market power, and the competitive forces which surround them, we conclude that any contract between non-dominant carriers can be reasonably interpreted as 'minor' and thus subject to our exemption power under Section 211(b)."). *See also Reporting Streamlining Order*, 1 FCC Rcd at 933-34, paras. 2-3.

106 In the situation where there are more than two contracting carriers, the contracts would need to be filed if any one of the carriers has market power on any of the routes included in the contract.

107 *See* 47 C.F.R. § 43.51(a)(3).

government is acting as a foreign carrier by directly providing international telecommunications services, the contract filing requirements would apply. We seek comment on whether there are other reasons to retain this filing requirement, such as national security concerns. Commenters should address whether we should continue to require all or certain agreements between U.S. carriers and foreign governments under Section 43.51 or if we should eliminate the requirement.

40. In sum, we propose to simplify and clarify Section 43.51 to provide that the only copies of contracts that should be filed with the Commission are those U.S. carrier contracts for common carrier service between the U.S. and foreign points involving: (1) a foreign carrier that has market power in its foreign market, or (2) a U.S. carrier that has been classified as dominant on any route included in the contract, except for U.S. carriers classified as dominant on a particular route due only to a foreign carrier affiliation.[108] We also propose to make several other changes to Section 43.51 to make the rule easier to follow, and we propose amending Section 63.21, regarding the conditions applicable to international authorizations, to reflect these changes. We seek comment on these proposed amendments to our rules.[109] Commenters should address whether there are any competitive harms that the filing of copies of contracts between carriers that both lack market power would help prevent.

F. Ex Parte Presentations

41. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[110] Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required.[111] Other rules pertaining to oral and written presentations are set forth in Section 1.1206(b) of the Commission's rules as well.

G. Initial Regulatory Flexibility Analysis

42. As required by the Regulatory Flexibility Act,[112] the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Notice. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice,[113] including this IRFA, to the Chief Counsel for the Advocacy of the Small Business Administration. *See* 5 U.S.C. § 603(a). In addition, the Notice and IRFA comments will be

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108 *See* 47 C.F.R. § 63.10.

109 Proposed revisions to Sections 43.51 and 63.21 are included in Appendix A.

110 47 C.F.R. §§ 1.1200, 1.1206; *Amendment of 47 C.F.R. § 1.1200 et seq. Concerning Ex Parte Presentations in Commission Proceedings*, GC Docket No. 95-21, Report and Order, 12 FCC Rcd 7348 (1997).

111 47 C.F.R. § 1.1206(b)(2).

112 *See* 5 U.S.C. § 603. The RFA, *see* U.S.C. § 601 *et. seq.*, has been amended by the Contract With American Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996)(CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

113 *See infra* paras. 57-62.

published in the Federal Register.

43. *Need for, and Objectives, of, the Proposed Rules:* The Commission is issuing this Notice of Proposed Rulemaking to review our regulatory regime for international interexchange telecommunications services, and to implement certain provisions of the 1996 Act. In light of the dramatic changes in the market for international interexchange services resulting from increased privatization and liberalization of foreign markets, the World Trade Organization (WTO) Basic Telecom Agreement, decreasing settlement rates and increased competition in the U.S. international services market, we believe it is timely for us to review our requirement that U.S. carriers file tariffs for international interexchange services under Section 203 of the Act. Because tariffs can limit the flexibility necessary for all U.S. carriers, including smaller carriers, to offer new services in a competitive market and may harm consumers through the effect of the 'filed rate doctrine," we propose requiring complete or mandatory detariffing, with limited exceptions, in this Notice of Proposed Rulemaking for the international interexchange services provided by non-dominant carriers. Complete detariffing will reduce carriers' filing costs, and, on balance, the public disclosure and maintenance of information requirements proposed in this item are minimal and do not outweigh the benefits to all U.S. carriers and U.S. consumers to be gained from detariffing. The objective of the Notice of Proposed Rulemaking is to provide an opportunity for public comment and to provide a record for a Commission decision on the issues stated above.

44. *Legal Basis:* We tentatively conclude that Section 10 of the Communications Act[114] authorizes the Commission to forbear completely from the tariff requirements contained in Section 203 of the Communications Act. In addition, Section 11 of the Communications Act directs the Commission to undertake a biennial review of its regulations concerning the operations or activities of any provider of telecommunications services. Thus, the Notice is adopted pursuant to Sections 1, 2, 4, 10, 11, 201-205, 218, 220, 226, 303(g), 303(r) and 332 of the Communications Act of 1934, as amended.[115]47 U.S.C. §§ 151, 152, 154, 160, 161, 201-205, 215, 218, 220, 226, 303(g), 303(r) and 332.

45. *Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply:* The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[116] The Regulatory Flexibility Act defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under section 3 of the Small Business Act.[117] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[118] Any rule changes that might occur as a result of this proceeding could impact entities which are small business entities, as defined in Section 601(3) of the Regulatory Flexibility Act. The proposed rules in this Notice of Proposed Rulemaking will reduce regulatory burdens on all non-dominant providers of international interexchange services, including small business entities.

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114 47 U.S.C. § 160.

115 *See* 47 U.S.C. §§ 151, 152, 154, 160, 161, 201-205, 215, 218, 220, 226, 303(g), 303(r) and 332.

116 5 U.S.C. § 63(b)(3).

117 *Id.* § 601(3).

118 *Id.* § 632.

46. The SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such companies that had been operating for at least one year at the end of 1992.[119] According to the SBA's definition, a wireline telephone company is a small business if it employs no more than 1,500 persons.[120] All but 26 of the 2,321 wireline companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 wireline companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 2,295 of these wireline companies are small entities that might be affected by these proposals.

47. Specifically, the proposals contained in the Notice apply to entities seeking authorization to provide international service. The proposals contained in the Notice are intended to improve market efficiency by permitting carriers to respond to the dynamics of the marketplace and further the goals of the Communications Act. At this time, we are not certain as to the number of small entities that will be affected by the proposals. Agency data indicates there has been a steady increase in the number of Section 214 applications filed with the Commission. The total number of licensees is difficult to determine, because many licenses are jointly held by several licensees. Based on agency data, we would estimate that there could be 800 applicants that might be a small entity. The Commission encourages interested parties to comment on the proposals in the Notice.

48. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements:* We believe that the proposed rules will reduce significantly the reporting burdens placed on small entities. The proposed rules would eliminate the requirement of filing tariffs for non-dominant interexchange carriers. These carriers would be required to retain business records containing price and service information regarding their international interexchange offerings. This information, however, is maintained by carriers in the normal course of business. The proposed rules only impose a requirement that providers of international interexchange services maintain this information for a period of at least two years and six months. It is likely that carriers maintain this information for this specific time period, as a normal business practice.

49. We propose that carriers adopt a public disclosure requirement to make information available to the public concerning current rates, terms, and conditions for all of their international interexchange services, in at least one location during regular business hours. For those carriers with Internet websites, we propose that the carriers make the information available on their websites and update the websites within twenty-four hours prior to making changes to the rates, terms, and condition of any international interexchange service. In lieu of tariffs, the public disclosure requirement will ensure that the information is readily available to the public in an accessible format

50. The rules also propose to modify the requirement for filing carrier-to-carrier contracts, thereby reducing the filing burden on most carriers. We propose to simplify and modify our rules and set forth specific criteria that would trigger the carrier contract filing requirement.

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119 U.S. Department of Commerce, *Bureau of the Census, 1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size*, at Firm Size 1-123 (1995).

120 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4812.

51. The proposals should enhance competition among providers of services, promote competitive market conditions and achieve benefits for the consumers while reducing he regulatory burdens on all non-dominant providers of international interexchange services, including small business entities.

52. *Steps Taken to Minimize Significant Economic Impact on Small entities, and Significant Alternatives Considered*: The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

53. We believe that the proposals will facilitate the development of increased competition in the international telecommunications marketplace and provide more flexibility for carriers to respond to the dynamics of the marketplace. Accounting rate reform policies, market forces, and increased competitive entry into the U.S. market have led to substantial reductions in consumer rates for international interexchange services. We believe that tariffs are no longer necessary to ensure that charges, practices, classification or regulations are just and reasonable and are not unjustly or unreasonably discriminatory. In addition, we believe that our proposals will contribute to market efficiency by permitting carriers to respond to the dynamics of the marketplace.

54. In considering alternatives for small entities, we believe that the proposals contained in the Notice are the least burdensome on small entities. We do not propose to standardize the requirements because the information is unique to the carrier and may be maintained in a manner that is consistent with the carrier's business practices. We propose to reduce the administrative costs to small entities by eliminating the tariff filing requirement. In addition, the public disclosure requirement should not impose burdens on small entities because the information is maintained in the normal course of business.

55. In this Notice, we are proposing to extend the policies and rules regarding the detariffing of domestic interexchange services to the international interexchange services of non-dominant carriers. We request comment on whether small entities would be adversely affected by the proposals herein and whether the proposals will enable small entities to respond to the demands of the market with minimum regulatory oversight, delays, and expenses. We believe that our proposals would have either no impact, or would reduce, any economic burdens on small entities. After evaluating the comments in this proceeding, the Commission will further examine the impact of any rule changes on small entities and set forth findings in the Final Regulatory Flexibility Analysis.

56. *Federal Rules Which Overlap, Duplicate or Conflict with the Commission's Proposal*: None.

H. Comment Filing Procedures

57. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments with the Secretary, FCC, in response to this Notice no later than November 17, 2000. Reply comments to these comments may be filed with the Secretary, FCC, no later than December 4, 2000. All pleadings are to reference IB Docket No. 00-202. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24,121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www/fcc/gov/e-

file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number, which in this instance is IB Docket No. 00-202. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

58. Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth St., S.W., Washington, D.C. 20554.

59. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to Peggy Reitzel, International Bureau, Telecommunications Division, 445 Twelfth St., S.W., Room 6A822, Washington D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number in this case, IB Docket No. 00-202), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy – Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file.

60. Regardless of whether parties choose to file electronically or by paper, parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, N.W., Washington, D.C., 20036. Comments and reply comments will be available for public inspection during regular business hours in the FCC Office of Media Relations, Reference Operations Division, Room CY-A257, 445 Twelfth Street, S.W. Washington, D.C. 20554. Copies also can be obtained from International Transcription Services, Inc. at 1231 20th Street, S.W., Washington, D.C. 20036, or by calling ITS at (202) 857-3800 or by faxing ITS at (202) 857-3805.

61. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with Section 1.49 and all other applicable sections of the Commission's rules.[121] All parties are encouraged to utilize a table of contents, to include the name of the filing party and the date of the filing on each page of their comments length of their submission. We also strongly encourage that parties track the organization set forth in this Notice in order to facilitate our internal review process.

62. Written comments by the public on the proposed and/or modified information collections are due the same day comments on the Notice of Proposed Rulemaking are due. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before 60 days after the date of publication in the Federal Register of the Notice of Proposed Rulemaking. In addition to filing comments with the Secretary, a copy of any comments on the information collection(s) contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Edward Springer, OMB Desk Officer, Room 10236

[121] 47 C.F.R. § 1.49.

NEOB, 725 17th Street, N.W., Washington, DC 20503 or via the Internet to edward.springer@omb.eop.gov.

I. Paperwork Reduction Act

63. This NPRM contains either a new or modified information collection. It will be submitted to the Office of Management and Budget (OMB) for review under the PRA. As part of its continuing effort to reduce paperwork burdens, we will invite the general public and the Office of Management and Budget (OMB), the general public, and other federal agencies to take the opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

J. Further Information

64. For further information regarding this proceeding, contact Kathryn O'Brien, Deputy Division Chief, Telecommunications Division, International Bureau, at (202) 418-0439 or KOBrien@fcc.gov or Lisa Choi, Attorney/Advisor, Telecommunications Division, International Bureau, at (202) 418-1384, or LChoi@fcc.gov. Information regarding this proceeding and others may also be found Initial Regulatory Flexibility Analysis.

III. ORDERING CLAUSES

65. Accordingly, IT IS ORDERED, that, pursuant to Sections 1- 4, 10, 11, 201-205, 211, 218, 220, 226, 303(g), 303(r) and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 160, 161, 201-205, 211, 218, 220, 226, 303(g), 303(r) and 332 the NOTICE OF PROPOSED RULEMAKING is hereby ADOPTED.

66. IT IS FURTHER ORDERED that, the Commission's Consumer Information Bureau, Reference Information Center shall send a copy of this NOTICE OF PROPOSED RULEMAKING, including the initial regulatory flexibility analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Public Law No. 96-354, 94 Stat. 1164, 5 U.S.C. § 601, *et seq.* (1981).

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas

Magalie Roman Salas
Secretary

APPENDIX A – PROPOSED RULES

AMENDMENTS TO THE CODE OF FEDERAL REGULATIONS

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 C.F.R parts 20, 42, 61, 63 and 64 as follows:

PART 20 – COMMERCIAL MOBILE RADIO SERVICES

1. The authority citation for part 20 continues to read as follows:

Authority: 47 U.S.C. 154, 160, 251-254, 303, and 332 unless otherwise noted.

2. Section 20.15 is amended by revising paragraph (c) to read as follows:

(c) Commercial mobile radio service providers shall not file tariffs for international and interstate service to their customers, international and interstate access service, or international and interstate operator service. Sections 1.771-1.773 and part 61 of this chapter are not applicable to international and interstate services provided by commercial mobile radio service providers. Commercial mobile radio service providers shall cancel tariffs for international and interstate service to their customers, international and interstate access service, and international and interstate operator service.

3. Section 20.15 is amended by revising paragraph (d) to read as follows:

(d) Nothing in this section shall be construed to modify the Commission's rules and policies on the provision of international service under Part 63 of this chapter. A commercial mobile radio service provider is required to comply with the requirement in § 42.11 if it provides international service to markets where it has an affiliation with a foreign carrier that possesses market power and that collects settlement payments from U.S. carriers. For purposes of this paragraph, *affiliation* is defined in § 63.18(h)(1)(i) of this chapter.

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PART 42 – PRESERVATION OF RECORDS OF COMMUNICATIONS COMMON CARRIERS

4. The authority citation for part 42 continues to read as follows:

Authority: Section 4(i), 48 Stat. 1066, as amended, 47 U.S.C. 154(I). Interprets or applies sections 219 and 220, 48 Stat. 1077-78, 47 U.S.C. 219, 220.

5. Section 42.10 is amended by revising paragraph (a) to read as follows:

§ 42.10 Public availability of information concerning interexchange services.

(a) A nondominant interexchange carrier (IXC) shall make available to any member of the public, in at least one location, during regular business hours, information concerning its current rates, terms and conditions for all of its international and interstate, domestic, interexchange services. Such information shall be made available in an easy to understand format and in a timely manner. Following an inquiry or complaint from the public concerning rates, terms and conditions for such services, a carrier shall specify that such information is available and the manner in which the public may obtain the information.

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6. Section 42.11 is amended by revising paragraph (a) to read as follows:

§ 42.11 Retention of information concerning detariffed interexchange services.

67. (a) A nondominant IXC shall maintain, for submission to the Commission and to state regulatory commissions upon request, price and service information regarding all of the carrier's international and interstate, domestic, interexchange service offerings. A commercial mobile radio service provider of international service shall only maintain such price and service information about its international service offerings and only for those routes on which the commercial mobile radio service provider is affiliated with a foreign carrier that possesses market power. The price and service information maintained for purposes of this paragraph shall include documents supporting the rates, terms, and conditions of the carrier's international and interstate, domestic, interexchange offerings. The information maintained pursuant to this section shall be maintained in a manner that allows the carrier to produce such records within ten business days.

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PART 43 – REPORTS OF COMMUNICATION COMMON CARRIERS AND CERTAIN AFFILIATES

7. The authority citation for part 43 continues to read as follows:

Authority: 47 U.S.C. 154; Telecommunications Act of 1996, Pub.L. 104-104, sec. 402(b)(2)(B), (c), 110 Stat. 56 (1996) as amended unless otherwise noted. 47 U.S.C. 211, 219, 220 as amended.

8. Section 43.51 is revised to read as follows:

§ 43.51 Contracts and concessions.

(a) (1) Any carrier set forth in paragraph (b) of this section must file with the Commission within 30 days of execution a copy of each contract, agreement, concession, license, authorization, operating agreement or other arrangement to which it is a party and amendments thereto with respect to the following:

(i) The exchange of services; and.

(ii) The interchange or routing of traffic and matters concerning rates, accounting rates, division of tolls, or the basis of settlement of traffic balances, except as provided in paragraph (c) of this section.

(2) If the contract, agreement, concession, license, authorization, operating agreement or other arrangement and amendments thereto is made other than in writing, a certified statement covering all details thereof must be filed by at least one of the parties to the agreement. Each other party to the agreement which is also subject to these provisions may, in lieu of also filing a copy of the agreement, file a certified statement referencing the filed document. The Commission may, at any time and upon reasonable request, require any communication common carrier not subject to the provisions of this section to submit the documents referenced in this section.

(b) The following carriers must comply with the requirements of paragraph (a) of this section:

(1) a communications common carrier that is engaged in domestic communications and has not been classified as non-dominant pursuant to § 61.3 of this chapter,

(2) a U.S. common carrier, other than a provider of commercial mobile radio services, that enters into a contract, agreement, concession, license, authorization, operating agreement or other arrangement and amendments thereto with a foreign carrier that has market power in a foreign market, or

(3) a U.S. carrier that has been classified as dominant on any of the international routes included in the contract, except for carriers classified as dominant on a particular route due only to a foreign carrier affiliation under section 63.10 of this chapter.

(c) With respect to contracts coming within the scope of paragraph (a)(1)(ii) of this section between subject telephone carriers and connecting carriers, except those contracts related to communications with foreign or overseas points, such documents shall not be filed with the Commission; but each subject telephone carrier shall maintain a copy of such contracts to which it is a party in appropriate files at a central location upon its premises, copies of which shall be readily accessible to Commission staff and members of the public upon reasonable request therefor; and upon request by the Commission, a subject telephone carrier shall promptly forward individual contracts to the Commission.

(d) Any U.S. carrier that interconnects an international private line to the U.S. public switched network, at its switch, including any switch in which the carrier obtains capacity either through lease or otherwise, shall file annually with the Chief of the International Bureau a certified statement containing the number and type (e.g., a 64-kbps circuit) of private lines interconnected in such a manner. The certified statement shall specify the number and type of interconnected private lines on a country specific basis. The identity of the customer need not be reported, and the Commission will treat the country of origin information as confidential. Carriers need not file their contracts for such interconnections, unless they are specifically requested to do so. These reports shall be filed on a consolidated basis on February 1 (covering international private lines interconnected during the preceding January 1 to December 31 period) of each year. International private lines to countries for which the Commission has authorized the provision of switched basic services over private lines at any time during a particular reporting period are exempt from this requirement.

(e) International settlements policy.

(1) If a U.S. carrier files an operating agreement (whether in the form of a contract, concession, license, etc.) with a foreign carrier with market power in that foreign market to begin providing switched

voice, telex, telegraph, or packet-switched service between the United States and a foreign point and the terms and conditions of such agreement relating to the exchange of services, interchange or routing of traffic and matters concerning rates, accounting rates, division of tolls, the allocation of return traffic, or the basis of settlement of traffic balances, are not identical to the equivalent terms and conditions in the operating agreement of another carrier providing the same or similar service between the United States and the same foreign point, the carrier must also file with the International Bureau a modification request § 64.1001 of this chapter. Unless a carrier is providing switched voice, telex, telegraph, or packet-switched service between the United States and a foreign point pursuant to an operating agreement that is exempt from the international settlements policy, the carrier shall not bargain for or agree to accept more than its proportionate share of return traffic.

(2) If a carrier files an amendment to an existing operating agreement with a foreign carrier with market power in that foreign market to provide switched voice, telex, telegraph, or packet-switched service between the United States and a foreign point, and other carriers provide the same or similar service to the same foreign point, and the amendment relates to the exchange of services, interchange or routing of traffic and matters concerning rates, accounting rates, division of tolls, the allocation of return traffic, or the basis of settlement of traffic balances, the carrier must also file with the International Bureau a modification request § 64.1001 of this chapter.

(3) A carrier that enters into a contract, including an operating agreement, with a carrier in a foreign point for the provision of a common carrier service between the United States and that point is not subject to the requirements of this subsection if the foreign point appears on the Commission's list of international routes that the Commission has exempted from the international settlements policy.

(f) Confidential treatment.

(1) A carrier providing service on an international route that is exempt from the international settlements policy under paragraph (e)(3) of this section, but that is otherwise required by paragraphs (a) and (b) of this section to file a contract covering that route with the Commission, may request confidential treatment under § 0.457 of this chapter for the rates, terms and conditions that govern the settlement of U.S. international traffic.

(2) Carriers requesting confidential treatment under this paragraph must include the information specified in § 64.1001(c) of this chapter. Such filings shall be made with the Commission, with a copy to the Chief, International Bureau. The transmittal letter accompanying the confidential filing shall clearly identify the filing as responsive to § 43.51(f).

Note 1 to § 43.51: To the extent that a foreign government provides telecommunications services directly through a governmental organization, body or agency, it shall be treated as a carrier for the purposes of this section.

Note 2 to § 43.51: Carriers may rely on the Commission's list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points for purposes of determining which foreign carriers are subject to the contract filing requirements set forth in this section. The Commission' list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points is available from the International Bureau's World Wide Web site at http://www.fcc.gov/ib.

The Commission will include on the list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points any foreign carrier that has 50 percent or more

market share in the international transport or local access markets of a foreign point. A party that seeks to remove such a carrier from the Commission's list bears the burden of submitting information to the Commission sufficient to demonstrate that the foreign carrier lacks 50 percent market share in the international transport and local access markets on the foreign end of the route or that it nevertheless lacks sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market. A party that seeks to add a carrier to the Commission's list bears the burden of submitting information to the Commission sufficient to demonstrate that the foreign carrier has 50 percent or more market share in the international transport or local access markets on the foreign end of the route or that it nevertheless has sufficient market power to affect competition adversely in the U.S. market.

Note 3 to § 43.51(e)(3): The Commission's list of international routes exempted from the international settlements policy is available from the International Bureau's World Wide Web site at http://www.fcc.gov/ib.

(i) A party that seeks to add a foreign market to the list of markets that are exempt from the international settlements policy must show that U.S. carriers are able to terminate at least 50 percent of U.S.-billed traffic in the foreign market at rates that are at least 25 percent below the benchmark settlement rate adopted for that country in IB Docket No. 96-261, Report and Order, 12 FCC Rcd 19,806, 62 FR 45758 (Aug. 29, 1997).

(ii) A party that seeks to remove a foreign market from the list of markets that are exempt from the international settlements policy must show that U.S. carriers are unable to terminate at least 50 percent of U.S.-billed traffic in the foreign market at rates that are at least 25 percent below the benchmark settlement rate adopted for that country in IB Docket No. 96-261.

PART 61 – TARIFFS

9. The authority citation for part 61 continues to read as follows:

Authority: Sections 1, 4(I), 4(j), 201-205, and 403 of the Communications Act of 1934, as amended 47 U.S.C. sections 151, 154(I), 154(j), 201-205, and 403 unless otherwise noted.

10. Section 61.3 is amended by revising paragraph (u) to read as follows:

§ 61.3 Definitions.

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(u) *Non-dominant carrier.* A carrier not found to be dominant. The nondominant status of providers of international interexchange services for purposes of this subpart is not affected by a carrier's classification as dominant as defined in § 63.10 of this Chapter.

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11. Section 61.19 is revised to read as follows:

§ 61.19 Detariffing of international and interstate, domestic interexchange services.

(a) Except as otherwise provided in paragraphs (b) and (c) of this section, or by Commission order, carriers that are nondominant in the provision of international and interstate, domestic interexchange services shall not file tariffs for such services.

(b) Carriers that are nondominant in the provision of international and domestic, interstate, interexchange services are permitted to file tariffs for dial-around 1+ services. For the purposes of this paragraph, dial-around 1+ calls are those calls made by accessing the interexchange carrier through the use of that carrier's carrier access code.

(c) Carriers that are nondominant in the provision of international and domestic, interstate, interexchange services are permitted to file a tariff for such services applicable to those customers who

contact the local exchange carrier to designate an interexchange carrier or to initiate a change with respect to their primary interexchange carrier. Such tariff will enable the interexchange carrier to provide service to the customer until the interexchange carrier and the customer consummate a written agreement, but in no event shall the interexchange carrier provide service to its customer pursuant to such tariff for more than 45 days.

12. Section 61.28 is revised to read as follows:

§ 61.28 International dominant carrier tariff filing requirements.

(a) Any carrier classified as dominant for the provision of particular international communications services on a particular route for any reason other than a foreign carrier affiliation pursuant to § 63.10 of this chapter shall file tariffs for those services pursuant to the notice and cost support requirements for tariff filings of dominant domestic carriers. as set forth in subpart E of this part.

(b) Other than the notice and cost support requirements set forth in paragraphs (a) of this section, all tariff filing requirements applicable to all carriers classified as dominant for the provision of particular international communications services on a particular route for any reason other than a foreign carrier affiliation pursuant to § 63.10 of this chapter are set forth in subpart C of this part.

13. Section 61.74 is amended by removing paragraph (d) and re-designate paragraphs (e) and (f) as paragraphs (d) and (e).

PART 63 – EXTENSION OF LINES, NEW LINES AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

14. The authority citation for part 63 continues to read as follows:

Authority: Section 1, 4(I), 4(j), 10, 11, 201-205, 214, 218, 403 and 651 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 160, 201-205, 214, 218, 403, and 571, unless otherwise noted.

15. Section 63.10 is amended by revising paragraph (c)(1) to read as follows:

§ 63.10 Regulatory classification of U.S. international carriers.

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(c) ***

(1) Authorized carriers regulated as dominant for the provision of international communications services on a particular route for any reason other than a foreign carrier affiliation pursuant to this section shall file tariffs for those services as set forth in § 61.28 of this chapter.

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16. Section 63.17 is amended by revising paragraph (b)(3) to read as follows:

§ 63.17 Special provisions for U.S. international common carriers.

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(b) ***

(3) Authorized carriers filing tariffs pursuant to §§ 61.19 or 61.28 of this chapter that route U.S.-billed traffic via switched hubbing shall tariff their service on a "through" basis between the United States and the ultimate point of origination or termination;

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17. Section 63.21 is amended by revising paragraph (b) to read as follows:

§ 63.21 Conditions applicable to all international Section 214 authorizations.

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(b) Carriers must file copies of operating agreements entered into with their foreign correspondents that possess market power within 30 days of their execution, and shall otherwise comply with the filing requirements contained in § 43.51 of this chapter.

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18. Section 63.21 is amended by revising paragraph (c) to read as follows:

§ 63.21 Conditions applicable to all international Section 214 authorizations.

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(c) Carriers regulated as dominant for the provision of international communications services on a particular route for any reason other than a foreign carrier affiliation under § 63.10 shall file tariffs pursuant to Section 203 of the Communications Act, 47 U.S.C. 203, and part 61 of this chapter. Carriers regulated as non-dominant, as defined in § 61.3 of this chapter, and providing detariffed interexchange services pursuant to § 61.19 of this chapter must comply with all applicable public disclosure, and maintenance of information requirements in §§ 42.10, and 42.11 of this chapter.

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CONCURRING STATEMENT OF COMMISSIONER HAROLD FURCHTGOTT-ROTH

Re: 2000 Biennial Regulatory Review; Policy and Rules Concerning the International, Interexchange Marketplace, IB Docket No. 00-202, Notice of Proposed Rulemaking (rel. October 18, 2000).

I applaud the Commission's decision to detariff the vast majority of international telecommunications services. Tariffs are anachronistic regulatory tools that have outlived their usefulness. Eliminating the burdensome requirement that companies file monumental tariff documents and that the FCC reviews them is a step in the right direction. Moreover, detariffing eliminates the filed rate doctrine defense against many consumer claims and moves the telecommunications marketplace closer to a fully competitive traditional open market – with regulation as the exception rather than the rule.

Nonetheless, some aspects of today's Notice trouble me. Fundamentally, the Notice is designed to create symmetry with the 1997 decision to de-tariff domestic long distance service that was recently affirmed by the Court of Appeals.[1] I understand the goal of symmetry, however I cannot support extending antiquated regulatory requirements to international services simply because we imposed them domestically. Instead, I believe the better approach would be to propose to eliminate these obligations internationally and call for comment on changing these requirements domestically. In a fast changing technological environment, our rules need to evolve quickly as well. Waiting until the 2002 biennial review or later – as some have proposed -- to revisit this requirement reflects regulation on "rotary dial" time not "Internet" time.

Two examples illustrate this residual outdated approach. Today's Notice proposes that all non-dominant international interexchange services make information available on the Internet concerning current rates, terms, and conditions for all of their international interexchange services. Although one can dispute the ultimate necessity of such a rule in a fully competitive market, such public disclosure may be sensible as we transition away from the highly regulatory (but information intensive) world of tariffs. The Notice goes from the marginally useful to the completely useless, however, when it also proposes that carriers make such rate, term, and condition information available in "at least one location during regular business hours . . .. "[2] In today's wired world, Internet access is available in the vast majority of communities. Whether the one mandated physical location for the file is Washington, D.C. or Hilo, HI, it will virtually always be easier for all but a random handful of Americans to access the records from the Internet than to travel to the carrier's office. It's not that the requirement is all that burdensome, it simply does not make any sense in today's wired world. Moreover, the mandate creates a regulatory requirement that we are duty bound to enforce. Do we

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1 MCI Worldcom, Inc. v. FCC, 209 F.3d 760 (D.C. Cir. 2000).

2 ¶ 5.

really wish to define and police "regular business hours" or what it means to "make available"?[3]

Second, the Notice also adopts an old school view of what it means to give notice to consumers about rates and terms. Based primarily on concerns about the sufficiency of notice, the NPRM permits tariffs for dial-around services and new customers of international carriers. [4] More specifically, the Notice posits that consumers in these contexts have no way to receive notice of the rates and terms for these services because there is not necessarily an existing relationship between the parties. Placing hundreds of pages long documents in some government building in Washington DC is a far cry from the meaningful notice that can be placed on an Internet website. Yet, in the NPRM, for services where it matters most, the Commission chooses to allow the 1950's style notice of federal tariffs over the 21st Century notice of the Internet. Posting such information on the Internet achieves the same goal – while removing government paperwork and limiting the filed rate doctrine defense for carriers.

In each of these examples, the majority is not willing to entertain these streamlined alternatives because it will create asymmetry with the domestic proceeding. However, I believe that such a deregulatory, pro-consumer tact that takes advantage of current technological access at least deserves public comment. We rarely have a chance to thoughtfully examine the utility of new regulatory requirements in light of rapid technological change – we should not squander that opportunity here. In the end, I would rather have a useful and updated rule, than an outdated, but symmetrical one.

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[3] The Commission has already had difficulty defining and enforcing these terms in the broadcast context. *See Queen of Peace Radio*, 15 FCC Rcd. 1934 (EB 2000)(imposing $ 7000 forfeiture for failure to maintain open files during "normal business hours"), *recon. denied*, 15 FCC Rcd. 7538 (EB 2000), application for review granted and forfeiture cancelled, 2000 WL 1051790 (2000).

[4] See ¶ 20.